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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

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DB STRUCTURED PRODUCTS, INC., : Case No. 07 Civ. 4119 (DC)

Plaintiff, : **THIRD PARTY  
COMPLAINT**  
 -- against --

LENDER LTD., :  
 Defendant/Third-Party Plaintiff, :

-- against-- :

CML DIRECT, INC., d/b/a CREATIVE MORTGAGE  
 LENDING, :  
 Third-Party Defendant.

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 Defendant/Third-Party Plaintiff Lender Ltd., by and through its attorneys Kaufman & Kahn,  
 LLP, as and for its Third Party Complaint, pursuant to Fed. R. Civ. Pro. Rule 14(a), states as follows:

1. Plaintiff DB Structured Products, Inc. ("DBSP") has filed against defendant Lender Ltd.  
 a Summons and Complaint. (A copy of DBSP's Summons and Complaint, with exhibits, is annexed and  
 made Exhibit "A" hereto.)

**JURISDICTION AND VENUE**

- 2. Supplemental jurisdiction of the court is invoked pursuant to 28 U.S.C.A. §1367(a).
- 3. Venue is proper in this District pursuant to 28 U.S.C.A. § 1331(b).

**PARTIES**

- 4. Third-Party Plaintiff Lender Ltd. ("Lender") is a corporation formed under the laws of Michigan with its principal place of business located at 7789 East M-36, Whitmore Lake, Michigan.
- 5. Upon information and belief, Third-Party Defendant CML Direct, Inc., d/b/a Creative Mortgage Lending ("Creative Mortgage"), is a corporation formed under the laws of Michigan with its principal place of business located at 26555 Evergreen Rd., Suite 810, Southfield, Michigan 48076.

**FACTS**

- 6. Lender is in the business of mortgage lending.
- 7. Pursuant to an agreement dated January 13, 2006 (the "IOC Agreement"), Creative Mortgage became an Independent Operating Center ("IOC") or branch of Lender.
- 8. Creative Mortgage originated the loans that were purchased by DBSP and are the subject of the Complaint (the "DBSP Loans").
- 9. Creative Mortgage negotiated the agreement with DBSB without the procedures, review or authorization of Lender.
- 10. The IOC Agreement was terminated in June 2006.
- 11. Lender and Creative Mortgage, by Sanger, its co-President, entered into an agreement dated January 16, 2007 (the "Assignment and Assumption"). (A copy of the Assignment and Assumption is annexed and made Exhibit "B" hereto.)

12. The Assignment and Assumption provides as follows:

CML Direct Inc. hereby assumes and agrees to discharge all of Lender, Ltd.'s duties and obligations under such Agreements, effective with the date of this Assignment and Assumption and agrees to hold Lender, Ltd. harmless from any economic loss or performance obligation under such Agreements and after the date of this Agreement.

See Ex. B.

13. Upon information and belief, based on email correspondence from DBSP in connection with DBSP's demanding repurchase of the DBSP Loans, the DBSP Loans consist of loans made to the following borrowers: Maradith Raymond (two loans); Melissa Wells (two loans); Malik Salaam (two loans); Robert Corsi; and Joseph Miller. (A copy of an email dated April 16, 2007, from Jimmy Yan of Deutsche Bank Securities, Inc. is annexed and made Exhibit "C" hereto.)

14. A schedule of loans that are the subject of the Assignment and Assumption is annexed thereto, and the DBSP Loans are specifically set forth on the schedule. (A copy of excerpts from the schedule, marked to indicate the DBSP Loans, is annexed and made Exhibit "D" hereto.)

15. Creative Mortgage confirmed the execution of the Assignment and Assumption in a series of emails dated January 11, 2007 through January 16, 2007, between Greg Drury, Assistant Vice President of Lender, and Jonathan Tomlanovich, an employee of Creative Mortgage. (A copy of the emails are annexed and made Exhibit "E" hereto.)

16. The "Seller Loan Purchase Agreement" dated March 10, 2006, between DBSP and Lender provides as follows: "Any suit, action, or proceeding against Seller [Lender] with respect to this Agreement may be brought in a court of competent jurisdiction in the County of New York, New York or in the United States District Court for the Southern District of New York." See Ex. 1 to

Complaint (Ex. A hereto).

17. By virtue of executing the Assignment and Assumption, defendants agreed, *inter alia*, to subject themselves to the jurisdiction of the United States District Court for the Southern District of New York in connection with claims arising out of the DBSP Loans.

18. Based on the foregoing, to the extent Lender allegedly has any liability to DBSP, Creative Mortgage is liable entirely therefor.

**WHEREFORE**, Defendant/Third-Party Plaintiff Lender Ltd. demands judgment against Third-Party Defendant CML Direct, Inc., d/b/a Creative Mortgage Lending, for all sums that may be adjudged against Lender Ltd. in favor of plaintiff D.B. Structured Products, Inc.

Dated: New York, New York  
August 20, 2007

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